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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------|------------------|
| 09/707,536 | 11/07/2000 | Sophie Brocheton | 3882-906-CIP | 9778 |
| 22442 | 7590 | 08/10/2004 | EXAMINER | |
| SHERIDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202 | | | SHERRER, CURTIS EDWARD | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/707,536 | BROCHETON ET AL. | |
| | Examiner | Art Unit | |
| | Curtis E. Sherrer, Esq. | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/21/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-12, and 14-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 8-12 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Again, the term "about" in claims 1, 19 and 20 is a relative term that renders the claim indefinite. The term "about" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 8-12 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oeschle *et al.* (U.S. Pat. No. 5,484,620)("Oeschle").

Oeschle teaches the production of a filter aid for the filtration of beverages, such as beer. The particles are produced by using fine-grained organic particles of a synthetic

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nature, such as, polyamides. (Col. 3, lines 2-10). The particles are sintered together to form an agglomeration and then reduced in size and sorted “within the desired granular size spectrum.” (Col. 3, lines 15-21). The resultant product is useful as a filter aid, especially beverages and especially for alluvial and/or cake filtration. (Col. 4, lines 59-64) and col. 5, lines 32-35).

While the patent is silent as to the specifically claimed attributes, i.e., specific mass, shape factor, uniformity coefficient, Oeschle states that “filtering aids [] have multiple uses and that [they] have defined physical and/or chemical properties, i.e., are adapted to a respective particular application.” (Col. 2, line 66 to col. 3 lines 2). Said claimed attributes are considered to be result effective variables that those in the art commonly optimize to obtain the desired filter aid. It would have been obvious to those of ordinary skill in the art to produce the filter aid of Oeschle with the claimed attributes because said attributes are commonly modified to obtain the desired results.

Response to Arguments

Applicants’ arguments filed 08/22/03 have been fully considered but they are not persuasive.

Applicants now argue that the term “about” is not indefinite because the Office has not met its burden in showing that the said term is indefinite. It is well known that the term relates to an indefinite amount and therefore its use in the claims makes the claims indefinite.

With regards to the rejection based on obviousness, applicants, for a third time, state that the prior art reference makes no mention of the claimed parameters, i.e., shape

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factor, uniformity coefficient, specific surface, etc. Again, as stated in the last Office action, said claimed attributes are considered to be result effective variables that those in the art commonly optimize to obtain the desired filter aid. Applicant teaches as much on page 6, where it is shown that shape factor is a ratio of the smallest diameter to the largest diameter of the particle (as disclosed in Trasferts et Phases Dispersees) and the specific surface is measured by the method taught by Lowell et al. (Powder surface area and porosity). These are well known physical characteristic measurements performed in the art.

Applicants direct much the same comments, as in their last response, to the Hermia Declaration in order to demonstrate unexpected results. This Declaration supplies no further information than previously supplied in applicants' remarks. As previously stated, Table 2 is narrowly directed to the use of a nylon material (Rislan) and a polyamid 12 (Orgasol). The claims are not so narrowly written as to be directed to only these types of filter aids. Nor do the broad claims exclude some of the filter aids used in the comparison. At present the data found in Table 2 does not embody unexpected results for the claimed invention. The unexpected results must be commensurate in scope with claimed invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner